

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

DJURO G. ZRILIC,

Plaintiff,

v.

Civ. No. 07-416 PJK/RLP

BOARD OF REGENTS FOR NEW
MEXICO HIGHLANDS UNIVERSITY, *et al.*,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Defendants' Motion for Protective Order and Motion to Quash Subpoena.

On March 20, 2008 a Notice to Take Deposition Duces Tecum was faxed and hand-delivered to counsel for Defendants, noticing the deposition of non-party Angela Arguello-Juarez, who is the Compliance Officer in the Office of Grants and Research of New Mexico Highlands University and who is expected to testify at trial. She was requested to bring certain documents with her to the deposition, which was set for March 31, 2008, 11 days after the notice was sent to Defendants' counsel.

"A motion to quash or modify a subpoena duces tecum may only be made by the party to whom the subpoena is directed" *Smith v. Midland Brake, Inc.*, 162 F.R.D. 683, 685 (D. Kan. 1995). Even if the documents the deponent was requested to produce are "owned" by a party, if Ms. Arguello-Juarez is in possession or control of such documents, she would be obligated to produce them at her deposition in response to a properly served subpoena. *Epling v. UCB Films, Inc.*, 2000 WL 1466216, * 3 (D. Kan. 2000) (unpublished opinion).

The Court cannot tell from the parties' submissions whether the subpoena was properly served, following Fed.R.Civ.P. 45. In any event, Defendants have no standing to object to the subpoena.

IT IS THEREFORE ORDERED that Defendants' Motion for Protective Order and Motion to Quash Subpoena [Doc. 65] is denied.

IT IS SO ORDERED.


Richard L. Puglisi
United States Magistrate Judge